

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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In the Matter of)	
)	
MARITIME COMMUNICATIONS/LAND)	EB Docket No. 11-71
MOBILE, LLC)	File No. EB-09-IH-1751
	)	FRN: 0013587779
Participant in Auction No. 61 and Licensee of Various)	
Authorizations in the Wireless Radio Services)	
Applicant for Modification of Various Authorizations)	
in the Wireless Radio Services;)	
)	
Applicant with ENCANA OIL AND GAS (USA), INC.;	)	Application File Nos.
DUQUESNE LIGHT COMPANY; DCP	)	0004030479, 0004144435,
MIDSTREAM, LP; JACKSON COUNTY RURAL	)	0004193028, 0004193328,
MEMBERSHIP ELECTRIC COOPERATIVE; PUGET	)	0004354053, 0004309872,
SOUND ENERGY, INC.; ENBRIDGE ENERGY	)	0004310060, 0004314903,
COMPANY, INC.; INTERSTATE POWER AND	)	0004315013, 0004430505,
LIGHT COMPANY; WISCONSIN POWER AND	)	0004417199, 0004419431,
LIGHT COMPANY; DIXIE ELECTRIC	)	0004422320, 0004422329,
MEMBERSHIP CORPORATION, INC.; ATLAS	)	0004507921, 0004153701,
PIPELINE—MID CONTINENT, LLC; DENTON	)	0004526264, 0004636537,
COUNTY ELECTRIC COOPERATIVE, INC., DBA	)	and 0004604962
COSERV ELECTRIC; AND SOUTHERN)	
CALIFORNIA REGIONAL RAIL AUTHORITY)	
)	
For Commission Consent to the Assignment of Various)	
Authorizations in the Wireless Radio Services)	

To: Marlene H. Dortch, Secretary

Attn: The Honorable Richard L. Sippel, Chief Administrative Law Judge

REPORT PER ORDER FCC 12M-36

This filing is being made on behalf of Maritime Communications/Land Mobile, LLC
(Maritime) in response to the Presiding Judge's Order (FCC 12M-36; released July 30, 2012).

Before responding to the enumerated requests in the Order, to provide meaningful
background and context, Maritime first offers an explanation of the chart referenced in the Order.
In the chart Maritime designated some of its incumbent (site-based) licenses as being
"temporarily suspended." As explained in the interrogatory responses, due to a combination of

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changes in the industry and severe financial hardship, Maritime has not provided AMTS services pursuant to any of its incumbent (site-based) licenses since December 2007, with the exception of many facilities currently subject to spectrum leases. Precisely because it was never Maritime's intention to permanently abandon these licenses, the facilities were left in operational status, *i.e.*, the equipment was left installed at the sites and capable of operation. For purposes of preparing the interrogatory responses, Maritime divided the stations that are not currently being used to provide AMTS service into three categories: (a) those which it knows or has good reason to believe are still operational; (b) those for which it does not know the current operational status; and (c) those stations it knows are not currently operational. It is only this latter category that Maritime listed in the chart referenced in the Order.

In the context of the background explained above, Maritime responds to the enumerated requests in the Order as follows:

1. Operational status has not been reinstated as to any of the call signs listed in the chart. (It is noted, however, that Call Sign WHG716 is in the "operational" category and should be deleted from the chart. It was listed there in error, and this was explained and corrected in the declaration of Robert T. Smith as submitted in this proceeding on April 4, 2012, a copy of which is appended hereto for convenient reference.)

2. (a) The reason for temporary suspension as to each call sign is listed in the table. In most cases, the suspension was due to utilities having been disconnected for non-payment as of the dates indicated in the table. As to the remaining calls signs, operational status was temporarily suspended due to the loss of a tower, a site, or both. Further details on these call signs are as follows:

WHG693, WHG707 & WHG754 – The tower for each of these stations was lost due to structural failure, the first two as a result of Hurricane Katrina. Due to an apparent clerical error, the date listed for Call Sign WHG754 is not accurate. The tower fell at an earlier date. Maritime personnel are attempting to determine the correct date and an appropriate clarifying amendment will be filed.

WHG701 – The site was purchased and Maritime was not able to negotiate a lease-back with the buyer. Financial difficulties have to date prevented reestablishment of facilities at a new location.

WHG722, WHG739 & WHG745 – Access to the tower and/or site was lost, as of the dates indicated in the table, due to Maritime’s inability to maintain lease payments. The site owners either demanded that Maritime vacate or they removed the equipment and/or dismantled the tower themselves.

(b) Due to its financial condition and particularly in light of the bankruptcy, Maritime is not able to provide an anticipated date of reinstatement at this time. In the vast majority of the listed cases, suspension of operational status was the result of an inability to make lease and/or utility payments, a circumstance that is not likely to change until the bankruptcy is resolved. Given the Second Thursday path that Maritime is pursuing, it is anticipated that the eventual buyer of the Maritime assets, including Maritimes license holdings, will take the steps necessary under the applicable FCC regulations, to reestablish operations.¹

3. Maritime obtained four geographic licenses in Auction No. 61, as follows:

Call Sign	Market #	Market Name	Frequency
WQGF315	AMT002	Mid-Atlantic	Block A
WQGF316	AMT004	Mississippi River	Block A
WQGF317	AMT005	Great Lakes	Block A
WQGF318	AMT006	Southern Pacific	Block A

4. It is noted that these licenses are not implicated in Issue G of the hearing designation Order, *i.e.*, there is no issue in this hearing regarding their timely construction or permanent discontinuance of service. In any event, the construction deadline – the “Build-Out

¹ Maritime once again notes that there is no specified period of time after which temporary discontinuance of AMTS operations is deemed permanent. There are such rules for other radio services, but not for the Maritime Services, including AMTS. In fact, there is currently pending a rulemaking to establish such a provision. *Amendment of Parts 1, 22, 24, 27, 74, 80, 90, 95, and 101 To Establish Uniform License Renewal, Discontinuance of Operation, and Geographic Partitioning and Spectrum Disaggregation Rules and Policies for Certain Wireless Radio Services*, WT Docket No. 10-112, *Notice of Proposed Rulemaking and Order*, 25 FCC Rcd 6996 (2010). The Commission there acknowledges that, because the consequence of permanent discontinuance is automatic termination of the authorization, “it is imperative that our rules provide a clear and consistent definition of permanent discontinuance of operations; *they do not*.” 25 FCC Rcd at 7017 (emphasis added). It would be both inequitable and unlawful to now penalize Maritime and terminate its authorizations by the retroactive application of a heretofore unannounced standard, particularly in light of the recent Supreme Court ruling in *FCC v. Fox TV Stations, Inc.*, ___ U.S. ___, 132 S. Ct. 2307 (2012): “A fundamental principle in our legal system is that laws which regulate persons or entities must give fair notice of conduct that is forbidden or required. ... This requirement of clarity in regulation is essential to the protections provided by the Due Process Clause of the Fifth Amendment.” 132 S. Ct. at 2317.

Date” – for these authorizations is not until December 29, 2016. Nevertheless, Maritime has entered into leases for current use of the spectrum pursuant to the Commission’s secondary market policies by several entities, including Atlas Pipeline—Mid Continent, LLC; Denton County Electric Cooperative, Inc. d/b/a CoServ Electric; Dixie Electric Membership Corp.; Duquesne Light Co.; Encana Oil and Gas (USA), Inc.; Enbridge Energy Co., Inc.; DCP Midstream, LP; Interstate Power and Light Co.; Jackson County Rural Membership Electric Cooperative; National Rural Telecommunications Cooperative; Puget Sound Energy, Inc.; Rappahannock Electric Cooperative; Shenandoah Valley Electric Cooperative; Southern California Regional Rail Authority; and Spectrum Tracking Systems.² Three other parties—DCP Midstream, LP; Interstate Power and Light Co.; and Wisconsin Power and Light Co.—cancelled or attempted to cancel spectrum leases with Maritime due to the unsavory prospect of having to continue litigating with Warren Havens for the indefinite future.³

Respectfully Submitted,



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Communications/Land Mobile, LLC

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Dated: August 1, 2012

² Maritime also has spectrum lessees pursuant to some of its incumbent (site-based) licenses, namely, Pinnacle Wireless Communications in the northeast; Duquesne Light Co. in the midwest; Puget Sound Energy, Inc. and Evergreen School District in the Pacific northwest.

³ It is ironic that one of Maritime’s chief accusers in this case is purposely interfering with and hampering Maritime’s ability to put spectrum into public service, while he himself, after holding 220 MHz licenses for 13 years, has built nothing, provided no service, and eventually had 364 licenses terminated as a result. *Warren C. Havens, Skybridge Spectrum Foundation, Verde Systems, LLC and its predecessor in interest, Telesaurus VPC, LLC*, ___ FCC Rcd ___, 56 Comm. Reg. (P & F) 179 (2012) (Order, DA 12-848, rel. May 31, 2012).

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April 4, 2012

Pamela S. Kane, Deputy Chief
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Enforcement Bureau
Federal Communications Commission
445 12th Street, SW – Room 4-C330
Washington, DC 20554

In re: EB Docket No. 11-71
Maritime Communications/Land Mobile, LLC

Dear Ms. Kane:

I am tendering herewith a copy of the executed declaration of Mr. Robert T. Smith in support of Maritime's March 19, 2012, *Maritime served its Errata and Additional Information Regarding Amended and Further Supplemental Response to Interrogatories*. It was stated at that time of filing that Mr. Smith had reviewed the document but was on the road and unable to execute the supporting declaration at that time. Upon his return to Maritime's office in Indiana, Mr. Smith once again reviewed the filing and executed a supporting declaration, a copy of which is now being served. As explained in the declaration, Mr. Smith notes two minor corrections to the information previously submitted.

I am filing the original of this letter with the Office of the Secretary.

Don't hesitate to contact me if you have any questions.

Very truly yours,



Robert J. Keller
Counsel for Maritime Communications/
Land Mobile, LLC

cc: Hon. Richard L. Sippel, Chief Administrative Law Judge
All Parties of Record in WT Docket No. 11-71

Declaration of Robert T. Smith

I, Robert T. Smith, state that I have assisted in the preparation of and have reviewed a final draft of the ERRATA AND ADDITIONAL INFORMATION REGARDING AMENDED AND FURTHER SUPPLEMENTAL RESPONSE TO INTERROGATORIES being filed in Federal Communications Commission EB Docket No. 11-71; that I am generally familiar with the factual matters addressed in said response; and that the factual assertions made in the response are, to the best of my knowledge, information, and belief, are (subject to the corrections stated in the following paragraph) true and accurate, and are made in good faith.

I reviewed the final draft of the filing on my smartphone while on the road. When I returned to the office on Wednesday, March 21, 2012, I printed out and reviewed a hard copy of the document, and I discovered two errors. First, in Table 3 on page 2 of the filing, it is stated that operation of Station WHG716 was temporarily discontinued in September 2010 because utilities were disconnected. This is incorrect. Maritime stopped paying for utilities at that time, but not because they were disconnected. Rather, Maritime sold the tower, arranged for a leaseback of tower space, and the obligation for utilities was transferred to the new owner. Thus, Station WHG716 should be deleted from Table 3. This also means that its status in Revised Table 2 should be changed to "O." Also, the status code for Station KAE889 Loc. 12 was incorrectly listed as "O" and should be changed to "U."

I hereby declare under penalty of perjury that the foregoing is true and correct.

Executed this 21st day of March, 2012.


Robert T. Smith

CERTIFICATE OF SERVICE

I hereby certify that on this 1st day of August, 2012, I caused copies of the foregoing pleading to be served, by U.S. Postal Service, First Class postage prepaid, on the following:

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